MINNESOTA MDH DEPARTMENT OF HEALTH

EFFECTIVE 03/01/2010

Protecting, maintaining and improving the health of all Minnesotans

January 29, 2010

Daniel A. Zander
[redacted]

RE: MDH File Number: AUC07002

Dear Mr. Zander:

Based on the facts and law in this matter as described in the enclosed Staff Determination, the Minnesota Department of Health (MDH) has determined you performed the services of an audiologist and hearing instrument dispenser in an incompetent or negligent manner when you failed to complete all required tests before recommending and dispensing a hearing instrument in violation of Minnesota Statutes, section 148.5195, subdivision 3(3), Minnesota Statutes, section 153A.14, subdivision 4b and Minnesota Statutes (2004), section 153A.15, subdivision 1(13); that you failed to include oral statements regarding the provisions of hearing instrument refunds on the written purchase agreement in violation of Minnesota Statutes, section 148.5195, subdivision 3(4) and section 148.5197, subdivision 1; that you failed to refer a client for a medical evaluation in violation of Minnesota Statutes, section 148.5195, subdivision 3(16); and that you failed to follow the United States Food and Drug Regulations related to dispensing hearing instruments in violation of Minnesota Statutes, section 148.5195, subdivision 3(20)(vi). Therefore, you are being assessed a disciplinary civil penalty in the amount of $2,400.00. In addition, you must successfully complete continuing education classes within twelve months in ethics, diagnostics, and patient counseling as approved by the Department and you must provide a copy of this Determination to any employer who hires you within two years of the effective date of this Determination. This disciplinary action is authorized by Minnesota Statutes, section 148.5195, subdivision 4 and Minnesota Statutes 2004, section 153A.15, subdivision 2.

This decision will be made final and effective 30 days from the date it is received by you. During that 30-day period, you have the right to challenge this decision in a contested-case hearing, as provided under Minnesota Statutes, Chapter 14. Requests for a hearing should be made in writing and include specific grounds for challenging the Department's decision. If you wish to request a hearing, please send a written hearing request, within 30 days of your receipt of this letter, to:

Tom Hiendlmayr, Director, Health Occupations Program
Minnesota Department of Health
PO Box 64882
Saint Paul, MN 55164-0882

You may also fax your response to Mr. Hiendlmayr at (651)201-3839. If you have any questions about this matter, please contact Catherine Dittberner Lloyd at (651)201-3706.

Sincerely,

Darcy Miner, Director
Compliance Monitoring Division

Enclosure

HEALTH OCCUPATIONS PROGRAM
MINNESOTA DEPARTMENT OF HEALTH

A Determination In the Matter of
Daniel A. Zander, Audiologist
Hearing Instrument Dispenser (Expired)

AUTHORITY

State Laws Applicable to Licensed Audiologists

1. Pursuant to Minnesota Statutes, section 148.512, subdivision 6, "audiologist" means a natural person who engages in the practice of audiology, meets the qualifications required by sections 148.511 to 148.5198, and is licensed by the commissioner under a general, clinical fellowship, doctoral externship, or temporary license. Audiologist also means a natural person using any descriptive word with the title audiologist.

2. Pursuant to Minnesota Statutes, section 148.512, subdivision 12, the practice of audiology, in pertinent part, includes, but is not limited to:
(1) identification, assessment, and interpretation, diagnosis, rehabilitation, and prevention of hearing disorders;
(2) measurement, assessment, and interpretation of auditory and vestibular function;
(4) selecting, fitting, and dispensing of assistive listening devices, alerting and amplification devices, and systems for personal and public use, including hearing aids and devices, and providing training in their use.
(4) screening of speech, language, voice, or fluency for the purposes of audiologic evaluation or identification of possible communication disorders.

3. Pursuant to Minnesota Statutes, section 148.5195, subdivision 3(3), the Department may take enforcement action against a practitioner for performing the services of an audiologist in an incompetent or negligent manner.

4. Pursuant to Minnesota Statutes, section 148.5195, subdivision 3(4), the Department may take enforcement action against a practitioner for violating sections 148.511 to 148.5198.

5. Pursuant to Minnesota Statutes, section 148.5195, subdivision 3(16), the Department may take enforcement action against a practitioner for failure to refer a client for medical evaluation or to other health care professionals when appropriate or when a client indicated symptoms associated with diseases that could be medically or surgically treated.

6. Pursuant to Minnesota Statutes, section 148.5195, subdivision 3(20)(vi), the Department may take enforcement action against a practitioner for failure to follow the Food and Drug Administration or Federal Trade Commission regulations relating to dispensing

hearing instruments. Prior to August 1, 2005, this requirement was contained in Minnesota Statutes (2004), section 153A.14, subdivision 6.

7. The Department has statutory authority to discipline audiologists under Minnesota Statutes, Section 148.5195, subdivision 4. The types of disciplinary action the Department may impose include refusal to grant or renew licensure, suspension, revocation, imposing a civil penalty not exceeding $10,000 and any reasonable lesser action. Pursuant to Minnesota Statutes, Section 13.41, disciplinary actions are public data.

8. Pursuant to Minnesota Statutes, section 148.5197, subdivision 1, oral statements made by an audiologist or certified hearing instrument dispenser regarding the provision of warranties, refunds, and service of the hearing aids dispensed must be written on, and become part of, the contract for sale and indicate the person or business entity obligated to provide the warranty, refund or service. Prior to August 1, 2005, this requirement was contained in Minnesota Statutes (2004), section 153A.14, subdivision 8.

State Laws Applicable to Certified Hearing Instrument Dispensers

9. Pursuant to Minnesota Statutes, section 153A.13, subdivision 4, "hearing instrument dispensing" means making ear mold impressions, prescribing, or recommending a hearing instrument, assisting the consumer in instrument selection, selling hearing instruments at retail, or testing human hearing in connection with these activities regardless of whether the person conducting these activities has a monetary interest in the sale of hearing instruments to the consumer.

10. Pursuant to Minnesota Statutes (2004), section 153A.13, subdivision 5, a "dispenser of hearing instruments" means a natural person who engages in hearing instrument dispensing whether or not certified by the commissioner of health or licensed by an existing health-related board . . . A person who offers to dispense a hearing instrument, or a person who advertises, holds out to the public, or otherwise represents that the person is authorized to dispense hearing instruments must be certified by the commissioner. Effective August 1, 2005, audiologist practitioners defined by Minnesota Statute, section 148.512 are not required to obtain a certificate to dispense hearing instruments unless they supervise non audiologist hearing instrument dispenser trainees.

11. Pursuant to Minnesota Statutes, section 153A.14, subdivision 4b, Hearing testing protocol, when conducting a hearing test for the purpose of hearing instrument dispensing, a dispenser must:
(1) comply with the United States Food and Drug Administration warning regarding potential medical conditions required by Code of Federal Regulations, title 21, section 801.420;
(2) complete a case history of the client's hearing;
(3) inspect the client's ears with an otoscope;
(4) conduct the following tests on both ears of the client and document the results, and if for any reason one of the following tests cannot be performed pursuant to the United

States Food and Drug Administration guidelines, an audiologist shall evaluate the hearing and the need for a hearing instrument: (i) air conduction at 250, 500, 1,000, 2,000, 4,000, and 8,000 Hertz. When a difference of 20 dB or more occurs between adjacent octave frequencies the interoctave frequency must be tested; (ii) bone conduction at 500, 1,000, 2,000, and 4,000 Hertz for any frequency where the air conduction threshold is greater than 15 dB HL; (iii) monaural word recognition (discrimination), with a minimum of 25 words presented for each ear; and (iv) loudness discomfort level, monaural, for setting a hearing instrument's maximum power output; and
(5) include masking in all tests whenever necessary to ensure accurate results.

12. Pursuant to Minnesota Statutes (2004), section 153A.15, subdivision 1(13), the Department may take enforcement action for performing the services of a certified hearing instrument dispenser in an incompetent or negligent manner.

13. Pursuant to Minnesota Statutes, section 153A.15, subdivision 2, the Department has statutory authority to discipline hearing instrument dispensers. The types of disciplinary action the Department may impose include issuance of public reprimands, suspension, revocation, denial of a certificate renewal, or suspension of the right to supervise trainees, the assessment of civil penalties not to exceed $10,000 for each separate violation, or any other action reasonable justified by the individual case. Pursuant to Minnesota Statutes, section 13.41, disciplinary actions are public data.

Federal Laws Applicable to Both Licensed Audiologists and Certified Dispensers

14. Pursuant to United States Code of Federal Regulations, title 21, section 801.420(c)(2), the User Instructional Brochure which accompanies a hearing instrument, shall contain a warning to hearing aid dispensers which states, in pertinent part, "Warning to Hearing Aid Dispensers: A hearing aid dispenser should advise a prospective hearing aid user to consult promptly with a licensed physician (preferably an ear specialist) before dispensing a hearing aid if the hearing aid dispenser determines through inquiry, actual observation, or review of any other available information concerning the prospective user, that the prospective user has any of the following conditions . . . (e) unilateral hearing loss of sudden or recent onset within the previous 90 days or (f) an audiometric air-bone gap equal to or greater than 15 decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz. . . . ."

FINDINGS OF FACT

1. Mr. Daniel A. Zander (hereinafter "Practitioner A") has been a registered and licensed audiologist since 2001. Practitioner A was certified to dispense hearing instruments on July 18, 2001 and renewed his certificate annually on November 1 of the years 2001, 2002, 2003, and 2004. Practitioner A's certificate to dispense hearing instrument expired on October 31, 2005 when Practitioner A did not submit an application to renew his certificate to dispense hearing instruments. Practitioner A is employed by Company A, which has offices in Minnesota and other states, including Arizona.

2 During a July 28, 2005 appointment with Practitioner A, Client 1 completed and signed a personal hearing assessment and wrote "Don't understand" to the question, "Please describe any problems you are having with your hearing." Client 1 answered "no" that he had not seen a physician within the preceding six months and answered "no" that he never had ear surgery. Client 1 answered "no" to each of the conditions following the question, "Do you have any of these symptoms?" This included deformity of the ear; hearing loss in one ear in the last 90 days; any pain in the ears; seen a doctor for wax removal; sudden or rapid hearing loss in the past 90 days; drainage from either ear in the past 90 days; and sudden or long term dizziness. Client 1 checked "left" to the question, "Which is your worse ear"? Client 1 answered "20 yrs" to the question, "How long have you had a hearing problem?" Client 1 answered "1 mo[nth]" to the question, "When was your last hearing test?" and Client 1 provided the name of the clinic that administered the hearing test. Client 1 answered "in crowds and watching TV" to the question, "Please describe the situation(s) where your hearing problem gives you the most trouble?"

3. On the July 28, 2005 audiogram and speech test results form, Practitioner A did not check the boxes titled "Results of Ear Inspection" and "Hearing History Review (FDA)." Practitioner A did not complete a "yes" or "no" answer to the question, "Audiometric Air-Bone gap equal to or greater than 15 DB (ANSI) at 500 Hz, 1000 Hz, and 2000 Hz?"; Practitioner A did not complete a "yes" or "no" answer to the question, "Are All 8 FDA Criteria met to allow continued testing?" Practitioner A performed air conduction hearing tests and bone conduction hearing tests for Client 1's right ear. Practitioner performed speech discrimination tests for Client 1's right ear; Practitioner A determined Client 1's most comfortable level (MCL) and loudness discomfort level (LDL) and noted Client 1's right ear tympanogram was "normal." Practitioner A performed air conduction hearing tests for Client 1's left ear. Practitioner A did not perform or document the results of bone conduction testing or speech discrimination tests for Client 1's left ear.

4. Practitioner A recommended that Client 1 purchase a behind-the-ear (BTE) hearing instrument for the right ear. Client 1 purchased a right hearing instrument in the amount of $4195 less a $500 trade-in discount. Under the terms of the cancellation provision, Client 1 was given a 30-day right to cancel the purchase by giving or mailing written notice. The guarantee gave Client 1 the right to return the hearing instrument within the 30-day period, with a refund amount of "$3768.90 - 5%." Client 1 signed and dated the purchase agreement on July 28, 2005. Practitioner A signed the purchase agreement on July 28, 2005 under the title, "MS, CCC-A" and included his Minnesota Hearing Instrument Dispensing Certificate Number next to his signature and title.

5. During the period starting August 12, 2005 and through August 29, 2005, Client 1 returned to Practitioner A for five trial period check ups and service appointments. Practitioner A noted he continued to adjust the telephone and television programs and made adjustments for loudness and clarity. On August 29, 2005, Practitioner A noted Client 1 was "still not there yet." On September 8, 2005, Practitioner A ordered a more powerful BTE hearing instrument to replace the standard BTE hearing instrument Client 1 purchased on July 28, 2005.

6. On September 13, 2005, Practitioner A delivered the new right BTE hearing instrument, to Client 1. During the period starting September 15, 2005 and through October 27, 2005, Client 1 returned to Practitioner A for five trial period check ups and service appointments. Practitioner A noted he continued to recalculate and adjust the programs for better clarity, better quality of voices, and for better intelligibility for television. On October 28, 2005, Client 1 had a trial period check up appointment with Practitioner A and notations indicated Client 1 was going to Arizona for the winter. While in Arizona, Client 1 went to Company A five times for adjustments on his hearing instrument and was seen by three different audiologist practitioners. When Client 1 returned to Minnesota, he saw Practitioner A on April 20, 2006, April 28, 2006 and May 4, 2006 for service appointments because Client 1 was unsatisfied with the performance of the hearing instrument. Practitioner A referred Client 1 to a second audiologist practitioner at Company A. On May 11, 2006, Client 1 went to the second audiologist practitioner for adjustments.

7. By letter dated June 26, 2006, Client 1 sent a letter to Company A requesting a rescission of the contract dated July 28, 2005 and a refund of $3,768.90. Client 1 stated the hearing instrument he purchased from Practitioner A did not improve his ability to hear conversations and television programs better than the hearing instrument he used as a trade-in as promised by Practitioner A. Client 1 stated he was "led to believe by representatives of Company A that the thirty-day (30) cancellation period would not be applicable and in any event, such period was tolled as a result of his continuing to seek correction of the defective product and Company A's continuing promises of improved results." Client 1 asked Practitioner A to return his old hearing instrument that was used as a trade-in discount, and asked Practitioner A for a full refund of $3,768.90. Client 1 stated the correction [to his hearing] never occurred. By letter dated July 11, 2006, Company A offered Client 1 a 50% refund, but denied a return of the trade-in because the Company A was not able to locate Client 1's old hearing instruments. Company A stated the contract clearly defined a 30-day trial period to return the hearing instrument and stated the manufacturer allows the dispenser 90 days to return instruments to the factory to receive credit. Company A stated Client 1 was beyond those dates and there were no file notations indicating that Client 1 asked for an extension of the time to return the hearing instrument.

8. On September 11, 2006, the Department received Practitioner A's response to the Department's request for information concerning Client 1. In his response, Practitioner A stated he "tested his [Client 1's] hearing sensitivity for puretones and speech recognition ability. Puretone results indicated a relatively flat shaped sensorineural hearing loss in the right ear of a moderately severe degree (pure tone average for speech frequencies was 60 dBHL). The results for the left ear indicated a severe/profound degree of sensorineural loss with the pure tone average for speech frequencies being impossible to calculate since there was no measured response at 4 kHz despite being at maximum levels of the audiogram." Practitioner A further stated Client 1 "reported his main problems with hearing in his daily life included understanding speech of others when in groups of more than two people, understanding television, and understanding others on

the telephone. Because understanding in noise (groups of more than two) was his main complaint, I recommended a hearing aid that would do the best job of helping him to understand speech better in a variety of settings including noise/groups. When recommending the particular model, I informed Client 1 that while the hearing aids recommended were the best choice to help in his reported problem situations, even people with normal hearing also have trouble in noise and that the hearing aids .... cannot replace what God gave you to begin with."

9. On November 2, 2006, the issues in the case were presented to Audiologist members of the Speech Language Pathologist and Audiologist Advisory Council Competency Review Committee (CRC) for evaluation and comment. CRC members reviewed the case and requested the Department obtain additional records from Practitioner A, including a medical clearance from Client 1's physician and any previous medical records concerning Client 1's hearing loss in his left ear.

10. On July 3, 2007, the Department received Practitioner A's response for additional information regarding Client 1. Practitioner A reported that during Client 1's initial appointment, Client 1 "stated he had no hearing in the left ear for years and was interested in getting help for the right ear only." Practitioner A reported when Client 1 completed his case history, he noted that he had a hearing problem for twenty years. Practitioner A stated, "This information coupled with Client 1's answers on the FDA questions were the reasons I did not perform masked bone conduction testing on the left ear. Speech testing was not performed on the left ear due to the fact that Client 1's pure tone threshold average exceeded the speech power limitations on my audiometer." Practitioner A stated, "While I believe Client 1 had a copy of an audiogram from a previous test that he showed me, I cannot be sure of this. He did, however, tell me that he had been deaf in the left ear for years and had tried a hearing aid in the left ear more than once in the past with no success." Practitioner A stated "Client 1's description of his hearing loss in the left ear, coupled with his informing me that he had tried hearing aids in his left ear previously without success and the lack of any red flags during questioning regarding his medical history/FDA questions (Client 1 denied any symptoms of tinnitus, unilateral or bilateral sudden loss, dizziness, ear pain or drainage), a sensorineural hearing loss (no air bone gap) in the right ear, and a tympanogram completed at the time of his testing showing normal eardrum mobility in his right ear, all caused me to believe that a medical clearance before fitting only his right ear with amplification was not necessary." Practitioner A stated his comment to "extend the trial period up to an extra month if necessary" was made on August 2, 2005, or at the time he delivered the hearing instrument to Client 1. The comment was made "in an effort to allow us to work together to achieve improved hearing/communication ability. I planned to see him several times after that with follow-up service to reprogram the hearing aid and counsel him." Practitioner A stated his company offered to refund Client 1 fifty-percent (50%) of the purchase price even though Client 1 made the request several months after the return privilege expired and his company could no longer receive credit from the factory for returning the instrument.

11. On July 20, 2007, the CRC reviewed the issues in this matter and made the following comments and recommendations:

- Client 1 has a significant asymmetrical hearing loss, which is a "red flag" in the FDA guidelines and requires a medical evaluation to determine if a medical issue caused the hearing loss, such as an acoustic neuroma or an ear infection, even if the client signed the FDA medical waiver. Under FDA regulations, Practitioner A is required to refer a client for medical evaluation when there is an air-bone gap greater than 15 dB at 500, 1000 and 2000 Hz. This determination is made by performing air conduction testing and bone conduction testing in both ears. Practitioner A did not determine if an air-bone gap existed for the left ear, because he did not perform bone conduction testing on the left ear.

- Practitioner A stated "the results for the left ear indicated a severe [to] profound degree of sensorineural hearing loss." Practitioner A mischaracterized Client 1's type of hearing loss in the left ear because Practitioner A did not perform diagnostic tests on the left ear to determine if the loss was sensorineural. Practitioner A must perform bone conduction to make this determination. Client 1 could have a conductive component to his hearing loss in his left ear and it could possibly be medically corrected through surgery. Bone conduction testing is also used to determine the sight of the lesion and determine if the client has a middle ear or inner ear problems. Since the left ear was not tested for bone conduction and Client 1 was not given word recognition test on the left ear, the type of hearing loss cannot be determined based on the test results.

- Practitioner A was required to conduct speech testing and perform bone conduction testing. Practitioner A could have determined if Client 1 had audibility in the low frequencies. If Client 1 had some middle ear involvement or better inner ear function, he would have correctly identified some words on a word list.

- Practitioner A did not meet the minimum standards required of a certified hearing instrument dispenser because Practitioner A did not perform all required Minnesota and FDA tests on the left ear, which include bone conduction testing, speech testing and Practitioner A did not determine if an air-bone gap existed on the left ear.

- The reasonable standard of care in audiology applied to the audiogram results would include recognition of a possible medical problem as a cause of Client 1's asymmetrical hearing loss. The longevity of Client 1's hearing loss in the left ear and Client 1's report that he was "deaf" in the left ear is not a sufficient reason for not making a medical referral or obtaining a medical clearance before recommending a hearing instrument. Clients are not expected to diagnose the hearing loss.

- Client 1 has a right to know the type of hearing loss, the treatment options and whether it is safe to treat the loss with hearing instruments. There is nothing in the record which indicates Practitioner A discussed Client 1's unilateral hearing loss or need for medical evaluation to determine the cause of hearing loss in the left ear.

- Practitioner A did not memorialize his verbal extension of the 30-day trial period on the written contract or in his case notations as required by law.

- This case does not represent the quality of work required of an audiologist and it is not representative of good patient care. The CRC recommended disciplinary action.

12. On December 15, 2008, the CRC reviewed this matter and discussed disciplinary action. The CRC recommended the Department require Practitioner A to obtain continuing education units in counseling, ethics and diagnostics and pay a civil penalty representing the costs of the investigation.

13. By letter dated March 16, 2009, the Department issued a Determination regarding Practitioner A's conduct in this matter and gave Practitioner A 30 days to appeal the Department's findings and request a contested case hearing as provided under Minnesota Statutes, Chapter 14. The Department notified Practitioner A his request for a hearing must be in writing and include specific grounds for challenging the Department's decision.

14. By letter dated March 27, 2009, Practitioner A appealed to the Department regarding its findings. Practitioner A stated he did not complete testing Client 1's left ear for bone-conduction because Client 1 reported he had been tested a month earlier by an audiologist practitioner at Company B, he had tried hearing instruments in the past without success and he had very poor hearing for 20 years. Practitioner A stated Client 1 asked him to proceed with testing and fit only the right ear, which had better hearing. Practitioner A stated he had no malicious intent concerning Client 1. Practitioner A also stated based on his experiences in the instant case, he would perform a complete hearing evaluation, including masking when necessary, regardless of the patient's request or previous test results. Practitioner A stated when Client 1 reported his "unhappiness," he referred Client 1 to his supervisor for further testing and fitting. Practitioner A stated Client 1 had been wearing the hearing instruments for eight to nine months when he requested a refund; therefore, he was denied a refund in compliance with Company A's and manufacturer's return policies. Practitioner A stated his Company A agreed to give Client 1 a refund provided he return the hearing instrument. Practitioner A requested the Department reconsider the indirect supervision requirement and reduction of the civil penalty.

15. On May 27, 2009, the Department received Practitioner A's renewal of his audiologist license. Question number 8 of the renewal states, "Have you ever engaged in, or aided or abetted another in engaging in, or had someone act on our behalf in any of the following acts or conduct? Please individually mark each questions." Practitioner A marked the box "yes" next to the statement (d) indicating he "violated Minnesota Statutes, section 148.511 to 148.5198; and "yes" next to the statement (p) indicating he "failed to refer a client for medical evaluation or to other health care professionals when appropriate, or when a client indicated symptoms associated with disease that could be medically or surgically treated," Client 1 checked "yes" next to question number 10 relating to

discipline and wrote (case still pending) at the end of the question. Practitioner A signed the renewal application May 31, 2009.

16. By letter dated August 11, 2009, the Department sent a letter to Client 1 requesting his signature on a release form to obtain the audiogram from Company B and asked Client 1 whether he obtained a refund from Practitioner A.

17. On August 14, 2009, the Department received a signed release form from Client 1 to obtain records from Company B. Client 1 included a note to the Department which stated he had not received a refund from Practitioner A. By letter dated August 14, 2009, the Department requested Company B provide records in its possession regarding Client 1.

18. On August 21, 2009, Company B responded to the Department and provided copies of records concerning Client 1. Client 1 was referred to Company B by a hearing instrument dispenser located in Arizona. On June 17, 2005, Client 1's right hearing was "screened" by an audiologist practitioner (hereinafter "Practitioner B") who noted, "Suggest referral to physician - sinus or allergy?" Practitioner B's June 21, 2005 notations state, "Patient stated 1 yr old aid – AZ – can't hear. Screened, reprogrammed. Patient doing much better today." Company B also provided a copy of a letter and facsimile dated June 20, 2005 from a hearing instrument business in Arizona, under signature of the "General Manager and HIPAA Representative." The representative indicated Client 1 was seen on March 2, 2004 for an "audiological evaluation by our hearing specialist" and the "Test results indicated a monaural mild to moderately severe sensorineural hearing loss in his right ear and the left ear had no response established with pure tone, bone conduction, and appropriate masking." The letter did not include the 2004 evaluation.

19. By letter dated October 2, 2009, the Department responded to Practitioner A's March 16, 2009 response to the Department. The Department agreed to amend the Determination but did not agree to withdraw the Determination because it found no evidence Client 1 received a complete audiological evaluation and medical evaluation prior to his appointment with Practitioner A. The Department agreed that Practitioner A had no malicious intent in this matter and agreed to reduce the civil penalty, eliminate the supervisory requirement, and eliminate the need to make a refund to Client if information was received Client 1 was given a refund. In addition, the Department reduced the continuing education (CE) requirements and reduced the length of time he was required to provide any new employers with a copy of the Determination. The Department gave Practitioner A 30 days to contest the amended Determination.

20. By letter dated November 6, 2009, the Department asked Client 1 if he returned the hearing instruments and received a refund. On November 30, 2009, the Department received confirmation that Client 1 returned the hearing instrument to Company A and received a refund on October 1, 2009.

CONCLUSION

Practitioner A did not comply with the requirements of Minnesota Statutes, section 148.5195, subdivision 3(3), 3(4), 3(16); and 3(20)(vi); Minnesota Statutes, section 158.5197, subdivision 1; Minnesota Statutes, section 153A.14, subdivision 4b; and Minnesota Statutes (2004), section 153A.15, subdivision 1(13).

DETERMINATION

1. Within 30 days of the effective date of this Determination, Practitioner A shall pay a civil penalty of $2,400.00 to reimburse the Department for the costs of the investigation and proceedings to date. Practitioner A must make the payment by check made payable to "State of Minnesota, Treasurer" and mail the check to the attention of Catherine Dittberner Lloyd, PO Box 64882, Saint Paul, MN 55164-0882.

2. Practitioner A may pay the $2,400.00 civil penalty in monthly installments of up to twelve months after the effective date of this action. If Practitioner A chooses to make installments, he must notify the Department in writing about his intentions, including how many installments he intends to make, in what amount, and over which time period. Practitioner A must send this information to: Catherine Dittberner Lloyd, PO Box 64882, Saint Paul, MN 55164-0882, within 30 days of receipt of this document.

3. Each payment will be made by check payable to "State of Minnesota, Treasurer", and mailed to Catherine Dittberner Lloyd, PO Box 64882, Saint Paul, MN 55164-0882, or any other address specified by MDH. Each payment is due by the last day of each month; however, Practitioner A may prepay at any time.

4. The penalty may be referred to the Minnesota Collection Enterprise (MCE), part of the Minnesota Department of Revenue, or any other source for collection, if Practitioner A misses a monthly payment by 14 calendar days after the established deadline. When this Order for a penalty becomes public and MDH refers the matter to MCE, MCE is authorized by Minnesota Statutes, section 16D.17, to obtain a judgment against Practitioner A without further notice or proceedings.

5. Within two years of the effective date of this Determination, Practitioner A must provide any employer who hires him as an audiologist in the State of Minnesota with a copy of this Determination.

6. Within twelve (12) months, Practitioner A shall successfully complete four (4) continuing education (CE) units on coursework related to patient counseling, ethics and diagnostics as approved by the Department. The classes shall be in addition to the continuing education requirements of Minnesota Statutes, section 148.5193.